

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHAUN HARRIS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 16-1116-SMY-RJD
)	
JERRY CHAVERS, LOUIS)	
MITCHELAR, PATRICK F. CORZINE,)	
And KENDALL D. ALVERS,)	
)	
Defendants.)	

RESPONSE TO MOTION TO REMAND

Now comes the defendant, LOUIS MITCHELAR (incorrectly sued herein as Louis Micheler), by and through his undersigned attorneys, PIERCE LAW FIRM, P.C., and for his Response to the plaintiff's Motion to Remand, states as follows:

Plaintiff has filed a motion to remand solely on the supposed procedural defect. Plaintiff, however, relies on their own procedural rule and thus the motion is not well taken.

This defendant filed a removal based on 28 U.S.C. §1441(c). As plaintiff acknowledges, removals under that section do not require the consent of the co-defendant. Instead, plaintiff argues that this section is inapplicable because the plaintiff has "conceded" that this Court has subject matter jurisdiction to hear the entire case. Unfortunately, jurisdiction cannot be created by the plaintiff's consent.

Plaintiff has joined together in this one action three separate and distinct claims against three separate and distinct entities arising out of three separate and distinct incidents. First, plaintiff claims that he was subject to discriminatory conduct by his ex-wife's husband on or about August 27, 2015. The claim against this defendant arises out of plaintiff's arrest on October 22, 2015 pursuant to an outstanding warrant. The third claim is against Kendall D.

Alvers and Patrick F. Corzine which is a simple motor vehicle accident. The only relation it has to the other claims is that it coincidentally occurred on the same day plaintiff was arrested by defendant, Officer Mitchelar.

It's axiomatic that federal courts are courts of limited jurisdiction and thus parties cannot conspire to create jurisdiction where none would otherwise exist. Plaintiff contends that the non-federal claims are subject to this Court's supplemental jurisdiction under 28 U.S.C. §1367. A clear reading of that section, however, mandates a rejection of plaintiff's argument. Supplemental jurisdiction is only available over "other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy". 28 U.S.C. §1367(a). In order to satisfy this requirement, the claims must involve "a common nucleus of operative fact". *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Plaintiff apparently concedes that the non-federal claims would not be within this Court's original jurisdiction under either federal question or diversity. Instead, plaintiff's sole argument is that they are inter-related because they represent different wrongs committed to the same plaintiff at different times. As such, these claims really are not part of the same case or controversy and are three separate and distinct causes of action arising at three separate times involving three separate sets of defendants.

This defendant has properly removed this case based on the federal question asserted against him. As such, this removal is proper under 28 U.S.C. §1441(c).

WHEREFORE, the defendant, LOUIS MITCHELAR (incorrectly sued herein as Louis Micheler), prays that this Court enter an order denying plaintiff's Motion to Remand and for such other relief as this Court deems equitable and proper.

Respectfully Submitted,

By: s/Charles A. Pierce

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2016 I electronically filed a RESPONSE TO MOTION TO REMAND on behalf of the defendant, LOUIS MITCHELAR, with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

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Respectfully submitted,

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